

Application Serial No. 10/664,645
Attorney Docket No. 86012-34000-USPT

REMARKS

Claims 1-69 appear in the present application for the Examiner's review and consideration. Claims 1, 20, 34, 43, 47, 51, 55, 56, 61 and 66 have been amended. As requested by the Examiner, Applicant affirms that claims 70-74 have been withdrawn from consideration in response to the Examiner's restriction requirement made during the telephone conversation with Applicant's representative on June 3, 2005.

The Office Action mailed July 11, 2005 has been carefully considered.

Claim Rejections:

1. Independent claims 1, 20 and 34 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,460,716 to Wong in view of U.S. Patent No. 5,092,479 to Wells and U.S. Patent No. 4,132,344 to Jewell. Independent claims 43, 47, 51, 55, 56, 61 and 66 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,460,716 to Wong in view of U.S. Patent No. 5,092,479 to Wells and U.S. Patent No. 4,132,344 to Jewell and U.S. Patent No. 5,758,791 to Mangla. Each of these rejections is respectfully traversed.

Each independent claim of the present application requires a "sidewall comprising a first sealing area and a first generally upwardly projecting wall." Independent claims 1, 20, 43, 47, 55, 56 and 61 require that the first sealing area includes:

a first generally outwardly projecting ledge, a second generally outwardly projecting ledge, and a second generally upwardly projecting wall, the second generally upwardly projecting wall encompassing and extending generally upwardly from the second generally outwardly projecting ledge, the first generally outwardly projecting ledge encompassing and extending generally outwardly from the second generally upwardly projecting wall.

Furthermore, independent claims 1, 20, 43, 47, 55, 56 and 61 require "the first generally upwardly projecting wall encompassing and extending generally upwardly from the first generally outwardly projecting ledge," while independent claims 34, 51 and 66 require "a first generally upwardly projecting wall encompassing the first sealing area." Independent claims 1, 47, 55, 56 and 61 further require that the lid have a second sealing area that "is adapted to engage the first generally outwardly projecting ledge, the second generally outwardly projecting ledge, and the second generally upwardly projecting wall of the first sealing area upon securing the lid and the base." The preferred embodiment of this sealing

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configuration can be seen in Fig. 4 and overcomes the stated disadvantage of prior art insulating foam containers that leak. (See ¶ [0003].)

In contrast, the Wong '716 patent discloses a plastic food container with "an inverted U-shaped rim." (Abstract.) Sealing is accomplished in the Wong '716 by the interaction of the U-shaped rim and flange of the base mating with the inverted U-shaped rim and flange of the lid. (See Wong '716 patent at Fig. 4 and col. 3, ll. 50-55.) Wong does not disclose a first sealing area having the configuration as claimed in the pending application. As best understood, the two elements in the Wong '716 patent identified by the Examiner as the "second generally upwardly projecting wall" and the "second generally outwardly projecting ledge" of the base are generally spaced from the lid, and thus cannot be considered to be part of a first sealing area. Moreover, there is no first generally upwardly projecting wall encompassing and extending generally upwardly from a first sealing area, let alone from a first generally outwardly projecting ledge of a first sealing area. In addition, Wong '716 does not have a second sealing area that "is adapted to engage the first generally outwardly projecting ledge, the second generally outwardly projecting ledge, and the second generally upwardly projecting wall of the first sealing area upon securing the lid and the base" as required by independent claims 1, 47, 55, 56 and 61 of the pending application. No configuration of the container shown in the Wong '716 patent discloses or suggests the configuration of a first sealing area as claimed in the pending application.

The combination of the Wong '716 patent with the two additional references cited by the Examiner likewise does not disclose or suggest the container as claimed. For example, neither the Wells '479 patent or the Jewell '344 patent, alone or in combination with the Wong '716 patent, nor the Wells, Jewell or Mangla '791 patents, alone or in combination with the Wong '716 patent, teach or suggest a "first generally upwardly projecting wall encompassing and extending generally upwardly from the first generally outwardly projecting ledge" or "a first generally upwardly projecting wall encompassing the first sealing area" as required by the independent claims of the pending application. Accordingly, independent claims 1, 20, 34, 43, 47, 51, 55, 56, 61 and 66, and the claims depending therefrom, are allowable over the prior art of record. For at least this reason, withdrawal of this rejection and allowance of claims 1, 20, 34, 43, 47, 51, 55, 56, 61 and 66, and the respective dependent claims are requested.

Furthermore, the Examiner has not identified any objective motivation in the references to make the three and four part combinations of the "living hinge" of the Wells

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'479 patent, the foam packaging of the Jewell '344 patent, the undercuts of the Mangla '791 patent and the disclosure of the Wong '716 patent. The Wong '716 patent is directed towards a molded plastic container. (Col. 1, ll.6-8.) Due to the nature of the plastic material used in the design "the body of the container provides little or no insulation between the hands of the user and the hot food inside the container," resulting in the user burning his hands on the food. (Col. 1, ll. 25-28.) To solve this problem, and provide a sealed container that will not burn the user, Wong '716 specifies that "the rim of the container extends out enough to allow the user to hold the container without burning fingers." (Wong '716, col. 1, ll. 29-31.) Although foam material were well known at the time, Wong '716 does not contemplate use of such a material.

In contrast, the Jewell '344 patent discloses a completely different type of container that insulates from heat, but intentionally does not seal the container as required by the Wong '716 patent. The Jewell '344 patent discloses "limited areas open to the atmosphere for the escape of steam from the interior of the package." (Wells '479, col. 2, ll. 44-45.) Furthermore, the Jewell '344 patent provides no disclosure or suggestion of making the complex molded shapes such as found in the Wong '716 patent. Rather, Jewell '344 teaches away from forming surfaces that would require a secondary operation to form a complex perpendicular surface. The Jewell '344 patent specifically states that "[i]t is to be observed that the formed aperture 70 is an opening which is formed in the dies and not by a punching operation or by another secondary operation and not by a surface lying perpendicular to the direction of movement of the dies as they close." (Jewell '344, col. 9, ll. 36-40.)

The Court of Appeals for the Federal Circuit has specified that "obviousness can not be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention." *ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 546 (Fed. Cir. 1998). Furthermore, "[w]hen the art in question is relatively simple . . . the opportunity to judge by hindsight is particularly tempting. Consequently, the tests of whether to combine references need to be applied rigorously." *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351 (Fed. Cir. 2001). The MPEP states that, "[w]hen the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the examiner to explain why the combination of the teachings is proper." See *Ex parte Skinner*, 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986). The MPEP further states that even if "all aspects of the claimed invention were individually known in the art [it] is not sufficient to

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establish a prima facie case of obviousness without some objective reason to combine the teachings of the references.” See MPEP §2143.01 (citing *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993)). No objective motivation has been cited to justify the combination of the multiple references cited in this rejection. Applicant therefore respectfully submits that a *prima facie* case of obviousness has not been established.

Accordingly, independent claims 1, 20, 34, 43, 47, 51, 55, 56, 61 and 66, and all of their dependent claims, are allowable over the cited references, singly or in combination. For at least this reason, withdrawal of this rejection and allowance of claims 1, 20, 34, 43, 47, 51, 55, 56, 61 and 66, and the claims depending therefrom is respectfully requested.

2. Dependent claims 10-11 and 27-28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,460,716 to Wong in view of U.S. Patent No. 5,092,479 to Wells plus U.S. Patent No. 4,132,344 to Jewell plus U.S. Patent No. 5,269,430 to Schlaupitz. This rejection is respectfully traversed.

Dependent claims 10-11 and 27-28 depend from independent claims 1 and 20, discussed above. At least for the reasons discussed above with regard to claims 1 and 20, it is submitted that each of these dependent claims is also allowable over the cited references, singly or in combination. Furthermore, no objective reason has been cited to support the additional combination of the disclosure of the Schlaupitz reference with the Wong ’716 patent plus the Wells ’479 patent, plus the Jewell ’430 patent.

Accordingly, dependent claims 10-11 and 27-28 are allowable over the cited references, singly or in combination. For at least this reason, withdrawal of this rejection and allowance of these claims is requested.

3. Dependent claims 12 and 29 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,460,716 to Wong in view of U.S. Patent No. 5,092,479 to Wells, plus U.S. Patent No. 4,132,344 to Jewell, plus U.S. Patent No. 4,915,251 to Payne. This rejection is respectfully traversed.

Dependent claims 12 and 29 depend from independent claims 1 and 20, discussed above. At least for the reasons discussed above with respect to claims 1 and 20, it is submitted that each of these dependent claims is also allowable over the cited references,

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singly or in combination. Furthermore, no objective reason has been cited to support the additional combination of the disclosure of the Payne reference with the Wong '716 patent, plus the Wells '479 patent, plus the Jewell '344 patent.

Accordingly, dependent claims 12 and 29 are allowable over the cited references, singly or in combination. For at least this reason, withdrawal of this rejection and allowance of these claims is requested.

4. Dependent claims 16, 31 and 41 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,460,716 to Wong in view of U.S. Patent No. 5,092,479 to Wells, plus U.S. Patent No. 4,132,344 to Jewell, plus U.S. Patent No. 6,087,447 to Stevens. This rejection is respectfully traversed.

Dependent claims 16, 31 and 41 depend from independent claims 1, 20 and 34, discussed above. At least for the reasons discussed above with respect to claims 1, 20 and 34, it is submitted that each of these dependent claims is also allowable over the cited references, singly or in combination. Furthermore, no objective reason has been cited to support the additional combination of the disclosure of the Stevens reference with the Wong '716 patent, plus the Wells '479 patent, plus the Jewell '344 patent.

Accordingly, dependent claims 16, 31 and 41 are allowable over the cited references, singly or in combination. For at least this reason, withdrawal of this rejection and allowance of these claims is requested.

5. Dependent claims 17-18 and 32 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,460,716 to Wong in view of U.S. Patent No. 5,092,479 to Wells, plus U.S. Patent No. 4,132,344 to Jewell, plus U.S. Patent No. 6,883,678 to Chou. This rejection is respectfully traversed.

Dependent claims 17-18 and 32 depend from independent claims 1 and 20, discussed above. At least for the reasons discussed above with respect to claims 1 and 20, it is submitted that each of these dependent claims is also allowable over the cited references, singly or in combination. Furthermore, no objective reason has been cited to support the additional combination of the disclosure of the Chou reference with the Wong '716 patent, plus the Wells '479 patent, plus the Jewell '344 patent.

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Accordingly, dependent claims 17-18 and 32 are allowable over the cited references, singly or in combination. For at least this reason, withdrawal of this rejection and allowance of these claims is requested.

6. Dependent claims 20-22, 24-26 and 30 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,460,716 to Wong in view of U.S. Patent No. 4,132,344 to Jewell. This rejection is respectfully traversed.

Dependent claims 21-22, 24-26 and 30 depend from independent claim 20, discussed above. At least for the reasons discussed above with respect to claim 20, it is submitted that each of these dependent claims is allowable over the cited references, singly or in combination.

Accordingly, dependent claims 17-18 and 32 are allowable over the cited references, singly or in combination. For at least this reason, withdrawal of this rejection and allowance of these claims is requested.

7. Dependent claims 6, 23, 33 and 42-69 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,460,716 to Wong in view of U.S. Patent No. 5,092,479 to Wells, plus U.S. Patent No. 4,132,344 to Jewell, plus U.S. Patent No. 5,758,791 to Mangla. This rejection is respectfully traversed.

Dependent claims 6, 23, 33 and 42 depend from independent claims 1, 20 and 34, 43, 47, 51, 55, 56, 61, and 66, discussed above. At least for the reasons discussed above with respect to the independent claims, it is submitted that each of these dependent claims is also allowable over the cited references, singly or in combination. Furthermore, no objective reason has been cited to support the combination of the cited references.

Accordingly, claims 6, 23, 33 and 42-69 are allowable over the cited references, singly or in combination. For at least this reason, withdrawal of this rejection and allowance of these claims is requested.

Conclusion:

For at least the reasons discussed above, the pending claims of this application are allowable over the cited art. Should any issues remain, a further personal or telephonic interview is respectfully requested to discuss the same to expedite the allowance of the claim in this application.

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No additional fees are believed to be due for this submission. Should any additional fees be due, however, please charge the required fee to Winston & Strawn Deposit Account No. 50-1814.

Respectfully submitted,

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Date


Howard I. Shin (Reg. No. 47,082)
For: Daniel J. Hulseberg (Reg. No. 36,554)

WINSTON & STRAWN
Customer No. 28763

212-294-6700